MONTANA LEGISLATIVE HISTORY

Chapter 55 19 83

Bill H 347 S _____ Original bill & history ✓ C

H. Committee on Judiciary

Hearing Date(s) 1-24 ✓ C

_____ C

_____ C

_____ C

Date Out _____ C

S. Committee on Senate Business & Ind

Hearing Date(s) 2-4 ✓ C

2-8 ✓ C

_____ C

_____ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 01/18/83
HEARING: 1/27/83
REPORT: 01/28/83, DO PASS
2ND READING: 02/01/83, DO PASS AYES: 96; NAYS: 1
3RD READING: 02/03/83, DO PASS AYES: 95; NAYS: 0

TRANSMITTED TO SENATE: 2/3/83
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 02/04/83
HEARING: 3/2/83
REPORT: 3/2/83, BE CONCURRED IN
2ND READING: 03/05/83 AYES: 49; NAYS: 0
3RD READING: 03/08/83 AYES: 48; NAYS: 0

RETURNED TO HOUSE: 3/8/83

TRANSMITTED TO GOVERNOR: 03/15/83
SIGNED: 03/17/83, CHAPTER 125

HB 347 -- DONALDSON -- REVISING THE SMALL TRACT FINANCING ACT OF MONTANA BY INCREASING THE LIMIT ON TRUSTEES' AND ATTORNEYS' FEES AND DELETING UNNECESSARY RECORDING LANGUAGE; AMENDING SECTIONS ....

INTRODUCED: 01/19/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/19/83
HEARING: 1/24/83
REPORT: 01/24/83, DO PASS, AS AMENDED
2ND READING: 01/26/83, DO PASS AYES: 63; NAYS: 32
3RD READING: 01/28/83, DO PASS AYES: 66; NAYS: 26

TRANSMITTED TO SENATE: 1/28/83
REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 01/29/83
HEARING: 2/4/83
REPORT: 02/07/83, BE CONCURRED IN, AS AMENDED
ON MOTION, 2/7/83, THAT THE BILL BE TAKEN FROM 2ND READING AND REREFERRED TO THE COMMITTEE ON BUSINESS & INDUSTRY. MOTION PASSED UNANIMOUSLY.
REPORT: 02/09/83, BE CONCURRED IN, AS AMENDED
2ND READING: 02/12/83 AYES: 48; NAYS: 0
3RD READING: 02/15/83 AYES: 49; NAYS: 0

RETURNED TO HOUSE WITH AMENDMENTS: 2/15/83
2ND READING: 03/01/83, BE CONCURRED IN AYES: 90; NAYS: 2
3RD READING: 03/02/83, BE CONCURRED IN AYES: 90; NAYS: 4

TRANSMITTED TO GOVERNOR: 3/7/83
SIGNED: 3/10/83, CHAPTER 55

HB 348 -- HOWE, VINCENT -- TO PROVIDE FOR THE NONPARTISAN ELECTION OF COUNTY SUPERINTENDENTS OF SCHOOLS AND COUNTY CLERKS; AMENDING SECTION ....

INTRODUCED: 01/19/83
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 01/19/83
HEARING: 2/3/83
REPORT: 02/03/83, DO NOT PASS
BILL KILLED: 02/05/83

HB 349 -- SPAETH, CONOVER, ASAY, ET AL. -- TO GENERALLY REVISE AND CLARIFY THE CONSERVATION DISTRICT LAWS; TO ESTABLISH A CONSERVATION PRACTICE LOAN PROGRAM; ... AND

HOUSE BILL NO. 347

INTRODUCED BY DONALDSON

IN THE HOUSE

January 19, 1983	Introduced and referred to Committee on Judiciary.
January 24, 1983	Committee recommend bill do pass as amended. Report adopted.
January 25, 1983	Bill printed and placed on members' desks.
January 26, 1983	Second reading, do pass.
January 27, 1983	Considered correctly engrossed.
January 28, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 29, 1983	Introduced and referred to Committee on Business and Industry.
February 7, 1983	Committee recommend bill be concurred in as amended. Report adopted.
	On motion taken from second reading and rereferred to Committee on Business and Industry.
February 9, 1983	Committee recommend bill be concurred in as amended. Report adopted.
February 12, 1983	Second reading, concurred in.
February 15, 1983	Third reading, concurred in. Ayes, 49; Noes, 0.

IN THE HOUSE

February 15, 1983	Returned to House with amendments.
February 17, 1983	On motion, consideration passed until the 46th legislative day.
March 1, 1983	Second reading, amendments concurred in.
March 2, 1983	Third reading, amendments concurred in. Sent to enrolling.
	Reported correctly enrolled.

House BILL NO. 347

INTRODUCED BY D Nelson

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SMALL TRACT FINANCING ACT OF MONTANA BY INCREASING THE LIMIT ON TRUSTEES' AND ATTORNEYS' FEES AND DELETING UNNECESSARY RECORDING LANGUAGE; AMENDING SECTIONS 71-1-315 AND 71-1-320, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-1-315, MCA, is amended to read:

"71-1-315. Notice -- sale -- payment. A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided:

(1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) the grantor, at the grantor's address as set forth in the trust indenture or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request;

(iv) any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold. Upon request of the trustee, the notice of sale shall be posted by a sheriff or constable of the county wherein the property to be sold is located.

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property or some part thereof is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least three public places in each county in which the property or some part thereof is situated. The

INTRODUCED BILL
HB 347

posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be ~~filed for record~~ recorded in the office of the clerk and recorder of each county where the property or some part thereof is situated, affidavits of mailing, posting, and publication showing compliance with the requirements of this section.

(3) On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels, and any person, including the beneficiary under the trust indenture but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(4) The purchaser at the sale shall pay the price bid in cash, and upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to resell the property at any time to the highest bidder. The

party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person."

Section 2. Section 71-1-320, MCA, is amended to read:

"71-1-320. Trustees' fees and attorneys' fees. Reasonable trustees' fees and attorneys' fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of 71-1-312, the reasonable trustees' fees and attorneys' fees to be charged to the grantor shall not exceed ~~$150~~ $250. In no event shall trustees' fees and attorneys' fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure."

-End-

JUDICIARY COMMITTEE

48 Legislature

ill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
323	Providing municipal court judges & city judges be added to the group of incumbent judicial officers who are sbj. to approval by voters when no election contest.	1/18/83	Rep. Veleber	1/27/83	Do Pass	1/27/83
327	To change the rights of and restrictions on a merchant detaining a suspected shop-lifter.	1/18/83	Rep. Bergene	1/28/83	Do Pass as Amended	1/31/83
331	To establish the offense of criminal possession of a toxic substance.	1/18/83	Rep. Pistoria	1/26/83	Do Pass as Amended	1/27/83
332	Removing the state's liability for the cost of a mental evaluation or commitment of a criminal defendant & related transportation costs.	1/18/83	Rep. Roush	1/28/83	Do Not Pass	1/31/83
453	Awarding litigation costs & attorney fees to a health care provider prevailing in a civil malpractice action providing injury not caused by malprac-tice of the provider.	1/22/83	Rep. S. Hansen	1/31/83	Tabled - 1/31/83	
347	Revising the Small Tract Financing Act of MT by increas-ing the limit on trustees' & attorneys' fees and deleting unnecessary recording lang.	1/19/83	Rep. Donaldson	1/24/83	Do Pass as Amended	1/24/83

'orm CS-32
.-81

MINUTES OF THE JUDICIARY COMMITTEE
January 24, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown at 8:00 a.m. in Room 224A of the Capitol. All members were present. Brenda Desmond, Legislative Council, was also present.

HOUSE BILL 246

REP. MUELLER, sponsor, stated House Bill 246 would provide for staggered terms for members of the Board of Pardons. The sponsor noted that every member of the subcommittee of the Task Force on Corrections signed the bill. The Task Force felt there is a need for continuity on the Board. A number of people on the Board are familiar with the law and have the same ideas. TOM KEEGAN was recently appointed to the Board. His term will expire in 1985.

Under House Bill 246, the terms of the members would be staggered. Terms for the various members would expire in 1986, 1987, 1988, and 1989.

There were no additional proponents.

MONA JAMISON, Governor's Office, was opposed to the bill. Originally, the Governor's Office had approved this bill. When it was in final form, however, the Office felt there were some points that should be raised. The Governor has introduced a bill that would allow the Governor to make appointments to the Board, upon his assumption of office, and the appointees would assume office immediately rather than at the end of the legislative session. The Board of Pardons is a quasi-judicial board under Section 21-5-124. Appointees can take office upon appointment and qualification. The qualification of an appointeee is his confirmation by the Legislature. The incumbents hold the position until the appointee is confirmed.

JAMISON stated the Governor's bill will be heard in the State Administration Committee. This bill states that if an appointment expires January 3 and a new Governor appoints a new person to fill that position, that person can take office right away. This would benefit any new Governor regardless of party. House Bill 246, however, runs in conflict with the Governor's bill. Under House Bill 246, in 1985 three people whose terms expire each have a staggered term. It will take three years for the new Governor to have his people on the Board.

HOUSE BILL 347

REP. DONALDSON, sponsor, stated this bill would revise the small tract financing act of Montana by increasing the limit on trustees' and attorneys' fees and deleting unnecessary recording language.

The limit charged is increased from $150 to $250. This charge has not been amended since the mid-1960's.

JOHN BARKEMEYER, Helena Abstract & Title Company, supported the bill. He stated the laws must offer reasonable protection to the parties. EXHIBIT I.

JOHN CADBY, Montana Bankers Association, also supported the bill. The real estate community has considered the problem the bill addresses. CADBY felt that instead of amending the law to $250, it should be amended to permit a fee of up to 3% of the amount due on the obligation, both principal and interest at the time of default. EXHIBIT J. The costs that are incurred for the attorney are the same whether or not the sale goes through.

DAVID BROWN, First Bank of Helena, also supported the bill. This law has not been amended within the last 25 years. Originally, the law was for only three acres. The law now covers parcels up to 15 acres. The $150 fee covers all circumstances whether there is one acre or 15.

In Billings in 1979 a fee of $3,400 was charged for the foreclosure of a subdivision. In Great Falls there have been many foreclosures. The law allows the trustee 120 days to bring the payment current.

BROWN agreed that a percentage would be appropriate instead of an exact fee.

WILLIAM GOWEN, Helena Abstract & Title Company, was also in favor of the bill. The title associations around the state are in favor of the bill proposed.

There were no further proponents.

There were no opponents.

REP. KEYSER asked the time period that comes under the Small Tract Financing Act. BROWN replied two weeks are required for legal notice and for what is covered by the act. REP.

KEYSER asked about the proposed amendment of 3%. REP. DONALDSON had no objection.

The hearing on the bill ended.

EXECUTIVE SESSION

HOUSE BILL 347

REP. IVERSON moved DO PASS, seconded by REP. JENSEN. REP. IVERSON moved the amendment of "3% of the amount due on the obligation, both principal and interest at the time of default" be inserted, and to strike the figure $250. REP. SEIFERT seconded the motion.

REP. ADDY noted he has a conflict of interest as his practice has dealt in this area. REP. RAMIREZ replied the bill does not have anything to do with the fee REP. ADDY has collected it only applies to the portion of the fee that can be recovered from the owner. REP. RAMIREZ further stated that it is not a conflict to vote on matters affecting a legislator's compensation. If it was, many of the Representatives who are farmers could not vote on the agricultural bills.

All were in favor of the amendment, except REP. HANNAH.

REP. KEYSER moved DO PASS AS AMENDED, seconded by REP. JENSEN.

REP. HANNAH felt the fee charged would be a substantial increase. REP. RAMIREZ replied the borrower has defaulted before this bill ever comes into play. An attorney's fee must be reasonable. A court will look at the number of hours in handling the case.

REP. ADDY noted the 3% is the maximum amount and not the minimum amount the attorney can charge.

The motion of DO PASS AS AMENDED passed with REP. HANNAH voting no.

HOUSE BILL 211

REP. J. BROWN moved DO PASS, seconded by REP. JENSEN. It was asked if a statement of intent was required. CHAIRMAN BROWN replied one is not required but will be made if the committee so requests.

REP. HANNAH asked about the $125. It was replied that either 66 2/3% of the wage earned or $125 a week would be given.

STANDING COMMITTEE REPORT

January 24, 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 347

First reading copy (White color)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SMALL TRACT FINANCING ACT OF MONTANA BY INCREASING THE LIMIT ON TRUSTEES' AND ATTORNEYS' FEES AND DELETING UNNECESSARY RECORDING LANGUAGE; AMENDING SECTIONS 71-1-315 AND 71-1-320, MCA."

Respectfully report as follows: That HOUSE Bill No. 347

BE AMENDED AS FOLLOWS:

1. Page 4, line 15.
Following: "$150"
Strike: "$250"
Insert: "3% of the amount due on the obligation, both principal and interest at the time of default"

AND AS AMENDED

DO PASS

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.

Exhibit I
HB 347
1/24/83

WITNESS STATEMENT

Name JOHN BARKEMEYER Committee On _____

Address HELENA MT Date 1-24-83

Representing HELENA ABSTRACT & TITLE CO Support X

Bill No. 347 Oppose _____

Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. The law must offer all reasonable protection to the parties. Recording Notice of Trustee Sale & other documents relative to the sale insures not only that they have
2. constructive notice of the proceedings but also insures that the sale proceedings can be easily proven to have conformed to the law subsequent to the sale.
3. The word "recorded" eliminates the ambiguity in the present act.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

Exhibit J
HB 347
1/24/83

HOUSE BILL NO. 347

That House Bill No. 15 be amended as follows:

Amend House Bill 347, introduced bill, page 4, section 2, line 15, strike the figure "$250." and insert in lieu thereof: "3% of the amount due on the obligation, both principal and interest at the time of default."

Exhibit J
HB 347
1/24/83

HOUSE BILL NO. 347

That House Bill No. 15 be amended as follows:

Amend House Bill 347, introduced bill, page 4, section 2, line 15, strike the figure "$250." and insert in lieu thereof: "3% of the amount due on the obligation, both principal and interest at the time of default."

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 347 DATE January 24, 1983

SPONSOR Rep. Donaldson

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Jo Ann Cobby	Helena	MT Bankers Assn	X	
David Brown	Helena	First Bank Helena	X	
John Bardemeyer	Helena	Helena Abstract & Title	X	
William F. Bowen	Helena	Helena Abstract & Title Co.	X	
Glenn Drobish	Helena	HD29	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

48th LEGISLATIVE SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 244	1-31-83	3-4-83	3-4-83				3-4-83		
HB 253	1-29-83	2-11-83	2-11-83				2-11-83		
HB 267	2-1-83	3-9-83	3-9-83					3-9-83	
HB 290	2-16-83	~~3-18-83~~ 3-19-83	3-19-83						3-19-83
HB 338	1-31-83	3-4-83	3-4-83				3-4-83		
HB 339	1-31-83	3-4-83	3-4-83				3-4-83		
HB 347	1-29-83	2-4-83	2-4-83					2-4-83	
RETURNED HB 347	2-7-83	~~2-7-83~~ 2-8-83	2-8-83					2-8-83	
HB 358	2-14-83	3-19-83	3-19-83				3-19-83		
HB 363	2-8-83	3-8-83	3-8-83					3-8-83	
HB 364	2-8-83	3-8-83	3-8-83					3-8-83	
HB 371	3-2-83	3-22-83	3-22-83				3-22-83		
HB 445	3-1-83		3-3-83	SENT TO		PUBLIC HEALTH			
HB 451	3-2-83	~~3-16-83~~ 3-18-83	3-18-83						3-18-83
HB 464	2-8-83	3-14-83	3-14-83				3-14-83		
RETURNED HB 464	3-16-83	3-21-83	3-21-83						3-21-83

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 4, 1983

The meeting of the Business and Industry Committee was called to order by Chairman Allen Kolstad on February 4, 1983, at 10:08 a.m., in Room 404, State Capitol.

ROLL CALL: All members of the committee were present.

CONSIDERATION OF HOUSE BILL 190: This bill is an act authorizing purchasers of gasoline in large volumes the option of purchasing gasoline on a temperature corrected basis. Representative Tom Asay, sponsor of this bill, stated this bill is designed to correct the situation that now exists and that is difficult to handle. The statutes require that the sale of petroleum products be on a gross volume basis only. Many of the petroleum distributors that have to buy from the refineries have a difficult situation as the refineries do not have the fuel at 60 degrees. Each 1 degree of temperature change is 5 gallons less. This bill is designed after laws that are presently in effect in Wyoming, Colorado and Utah. Legislation is being proposed in Utah on the same thing. In the House, because they did not understand what the last paragraph meant, they wanted it stricken. The transporter thing had them baffled. They have since been contacted by refinery personnel and they say this is strictly to do with the exchange of fuel between refineries. They would like to have that language reinserted.

PROPONENTS TO HOUSE BILL 190: John Augustine, representing Conoco, stated there is no problem with exchanges between refineries or transporters of gasoline or distillates, therefore, the section (3) that exempts them should be left in so in the future someone would not interpret the act to include them. Conoco has no objection to a distributor, who, when purchasing gasoline or distillates in the amounts of 7500 gallons or more, having a once a year option to purchase either on gross volume or a temperature corrected basis.

David Saylor stated he operates a bulk plant in Forsyth. He was a proponent to this bill due to difficulty they have had with hot products coming from the refinery. They have had some very high losses due to this.

R. M. Grundstead, representing G. M. Petroleum, stated he would like to go on record as a proponent for this bill and the amendment.

OPPONENTS TO HOUSE BILL 190: Harry Simons, Simons Petroleum, Shelby, stated he opposed this bill. He gets all his products by the pipeline. He buys it gross and sells it gross. We would wish to maintain that. This bill is really a special interest bill. It came from Conoco in Billings and people pulling from the refineries. Conoco, in a meeting last November, said they were going to put in a cooler to cool their petroleum. One of the dangers is it is going to push them back to a net purchase. It does not affect everyone in the business. It is addressing their problem. The amendment is not going to serve a great number of people in the business.

force anyone into anything. This option must be taken on a yearly basis. As far as the fear of farmers they meter the same off to them maybe you could lower that gallonage slightly. He has known for quite some time that gas shrinks with high temperature. He feels the bill is needed. The purpose is those who have to take the hot fuel have to have the same consideration as those who take the fuel off the pipeline.

The hearing was closed on House Bill 190.

CONSIDERATION OF HOUSE BILL 347: This bill is an act revising the Small Tract Financing Act of Montana by increasing the limit on trustees' and attorney's fees and deleting unnecessary recording language. Representative Gene Donaldson, sponsor of this bill, stated this bill deals with a Small Tract Financing Act. The part we are dealing with is the process of foreclosure. On page 3, line 4, they struck the words "filed for record" and inserted "recorded". On page 4, line 15, it shows that fees to be charged to the grantor currently can only be charged $150 for attorney fees. We are only talking about the person who reclaims the property and takes it back. The original request was to raise from $150 to $250, but they felt it was not enough. If the foreclosure does not take place the person would be responsible for 3% of the value for attorney fees.

PROPONENTS TO HOUSE BILL 347: David Brown, First Bank of Helena, stated he supported this bill, as amended. The bill was originally drafted to address a recording problem and as an afterthought they put in $250. In support of the 3% he has some letters he passed around to the committee. It frequently occurs that property goes to foreclosure. In 1970 the Small Tract Act was expanded to 15 acres. The fee that could go to the bank was not addressed. What they are saying this $150 has not kept up with real estate values or the complexity of foreclosures and cost runs well in excess of $150. A case in Great Falls, a VA loan in March 1980, cost $650. What frequently happens is it goes into foreclosure, the pressure is put on the person and he reclaims the property. The next year the same thing occurs.

John Cadby, Montana Bankers Association, stated he supported the bill. They are in favor of elimination of all the ceilings. Normally the attorney is going to charge you $50 per hour. If it is consummated they have a capacity of 5%. If it is not consummated they want 3%. Right now the current law does not allow them to recover that from someone who comes back to redeem their mortgage.

There were no further proponents and no opponents.

QUESTIONS FROM THE COMMITTEE:
Senator Gage asked what is the difference. If the foreclosure goes through it is 5% and if it does not it is 3%? Mr. Brown stated he is not sure. He thinks this is a fair compromise. It is a cost of doing business.

Senator Gage asked do you have more costs if the foreclosure goes through? Mr. Brown stated yes.

Senator Kolstad asked you say that isn't setting attorneys fees? Mr. Brown stated the attorney is subject to suit if they are charging exhorbitant fees.

Senator Lee asked when was this new language put in? Representative Donaldson stated through the Judiciary Committee.

Senator Fuller asked you passed out examples of costs -- are those typical? Mr. Brown stated yes. We think those are typical costs.

Senator Lee stated you mentioned in one of the questions earlier that you were able to absorb some of this cost in your financing? Now you say $150 is not enough. You are collecting the 1% a month on a $2 million loan.

Senator Kolstad stated we really do not know what size of a foreclosure you are talking about -- all you see are the fees. Mr. Brown stated he agreed with that. Bankruptcies, however, run the fees clear through the roof.

Senator Fuller asked what percentage of your loans end up in foreclosure? Mr. Brown stated very few. In Helena they had 3 out of 1,000; however that is not true in every town. Great Falls had had a lot of foreclosure actions. He suspects Anaconda and Butte will have some too.

Senator Goodover stated there is a major farm in Great Falls that is up for foreclosure. The amount due is a couple million dollars. Does that mean the 3% pertains to the $3 million? Mr. Brown stated the Small Claims Act refers to only 15 acres or under.

Representative Donaldson, in closing, stated he thinks it is difficult to set a flat fee.

The hearing was closed on House Bill 347.

CONSIDERATION OF SENATE BILL 292: This bill is an act to revise the law providing for protest of the issuance or transfer of a liquor license. Senator Goodover, sponsor of the bill, stated this bill is presented before you in connection with an incident that involved a liquor license. This is a bill to give the Administrative Department in the Liquor Division some leeway in calling for a hearing. A couple that owned a bar were divorced ten years ago and had a property settlement. He got the bar and she got the car and house. Ten years later the owner of the bar, for health reasons decided he had to sell it. He offered it for sale and got an offer to buy it. The hearing was posted and the previous half owner of the bar sent in a protest on the hearing. When the hearing was held she did not appear. The hearing cost money. It was considered a frivolous protest. Had this same kind of protest been filed and nobody showed up they could have gone ahead with the sale. This delayed a transaction over a period of several months. If the Administrator finds that a protest is without merit he has an option not to call a hearing. But if he finds that a hearing is needed then they will go ahead and have one. He had no other proponents to the bill.

concept.

In closing, Senator Halligan stated he thinks the effective date is a poor issue. If this bill is anything it should be an incentive and perhaps put a two-year effective date. He certainly would have no problem with that and with the $50 fee it should cover about 80% of the costs of the department. The good faith defense is still in the bill in Section 6. The truth-in-lending aspect only deals with banks. The consumer has to spend a lot of time trying to figure out the forms and with the prior language he felt it would take care of a lot of litigation. If it doesn't pass this time he will upgrade the bill and put it in again next time. The "flesh test" is applied to insurance contracts. He sees no problem in having the same for the consumer contracts.

The hearing was closed on Senate Bill 261.

ACTION ON HOUSE BILL 347: Senator Goodover made the motion that House Bill 347 Be Concurred In.

Senator Regan made the substitute motion that House Bill 347 Be Not Concurred In. She stated 3% will become an extraordinary amount of money. They could put it in at $250. They don't need that kind of relief or windfall as she sees it.

Senator Boylan seconded the motion.

Senator Goodover asked would there be anyone interested in amending it to $250. Senator Regan stated she had no objection to going to $250. It shows some good faith on our part that we addressed it. 3% is an impossible figure to accept.

Senator Regan withdrew her motion.

Senator Goodover made the motion that we amend the bill to include $250 and delete the 3%. Senator Gage seconded the motion.

The Committee voted unanimously by voice vote that the proposed amendment to HOUSE BILL 347 BE ADOPTED.

Senator Goodover made the motion that House Bill 347 As Amended Be Concurred In. Senator Christiaens seconded the motion.

The Committee voted unanimously, by voice vote, that HOUSE BILL 347 AS AMENDED BE CONCURRED IN.

ACTION ON HOUSE BILL 190: Senator Goodover asked Staff Attorney Petesch to make an amendment to reinstate subsection 3. Senator Gage seconded the motion.

The Committee voted unanimously, by voice vote, that the proposed amendment to HOUSE BILL 190 BE ADOPTED.

ACTION ON SENATE BILL 292: Senator Goodover made the motion that

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

48th LEGISLATIVE SESSION -- 1983 DATE 2-4-83

NAME	PRESENT	ABSENT	EXCUSED
PAUL F. BOYLAN	✓		
B. F. CHRIS CHRISTIAENS	✓		
HAROLD L. DOVER	✓		
DAVID FULLER	✓		
DELWYN GAGE	✓		
PAT M. GOODOVER	✓		
GARY P. LEE, VICE CHAIRMAN	✓		
PAT REGAN	✓		
PAT M. SEVERSON	✓		
ALLEN C. KOLSTAD, CHAIRMAN	✓		

STANDING COMMITTEE REPORT

February 4 19 83

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE Bill No. 347

(DONALDSON) GOODOVER

Respectfully report as follows: That HOUSE Bill No. 347
be amended as follows:

1. Page 4, line 15.
Following: "~~$250~~"
Strike: Remainder of line 15 through "DEFAULT" on line 17.
Insert: "$250"

AND AS AMENDED BE CONCURRED IN
~~XXXXXXX~~ DO PASS

ALLEN C. KOLSTAD, Chairman.

STATE PUB. CO.
Helena, Mont.

H.C.
22

Form CS-34
-79

NAME David Brown BILL NO. HB 347

ADDRESS First Bank Helena DATE 2-4-83

WHOM DO YOU REPRESENT Montana Bankers Assoc.

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Form CS-34
-79

NAME JOHN CADBY BILL No. HB 347

ADDRESS HELENA DATE 2-4-83

WHOM DO YOU REPRESENT MT BANKERS ASSN

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

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MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

February 8, 1983

The meeting of the Business and Industry Committee was called to order by Chairman Allen Kolstad on February 8, 1983, at 10:20 a.m., in Room 404, State Capitol.

ROLL CALL: All members of the committee were present.

ACTION ON SENATE BILL 105: Senator Severson stated there seemed to be a problem with a bill that we handled here a few days ago.

Senator Severson made the motion that the committee consider drafting a committee bill.

Noel Stout, Private Employment Agencies, gave a handout to the committee. (Exhibit No. 1) He stated like any business we do charge a fee or dollar amount and it was based on the annual income but it was also calculated on the first month's wages. Two years ago when the law was changed the word "proposed" or "estimated" was left out of the bill. They would like to charge a fee on annual salary but calculate on first months income. Last year they found 3,487 jobs for people. At this point they cannot even stay in business. The IRS has a hard time tracking people down and they would be in the same boat. They would like a committee bill so they can insert those words.

QUESTIONS FROM THE COMMITTEE:
Senator Regan stated she still has a great deal of trouble with the concept. She believes it does take the unanimous consent to introduce a committee bill. She does not know if she wants to do this. For safety sake she would prefer the Chairman appoint three people to work on some kind of bill and then see if the committee wishes to consider it.

Chairman Kolstad stated this was a reasonable approach. He appointed Senators Fuller, Gage and Severson to the subcommittee.

Mr. Stout stated if there are any questions you might have I have been in the business for 12 years and can answer any questions sincerely.

Senator Fuller asked what did you do last year? Mr. Stout stated last year we were somewhat in limbo as the Department of Labor interpreted the bill differently. They have always charged a fee on the first month's salary.

Senator Regan asked if they ever considered an assignment of wages? Mr. Stout stated he would like not to be in the bookkeeping function they would like to be putting people to work. If they have to wait a year they don't think they would have a ghost of a chance. The way the law is we have to wait until the annual salary is actually determined. They are asking for the committee bill and the word "proposed" to be included in the bill. Mr. Stout stated he will work with the subcommittee.

ACTION ON HOUSE BILL 347: Chairman Kolstad stated they made a motion on the floor to bring this bill back to the committee. They have a real problem with reinserting the language $250. It makes it extremely difficult for these outfits to operate under that kind of language. He thinks it would be fair if we had a set percentage rate.

Senator Lee made the motion that we strike on page 4, line 15, $250. and insert 1%. He had some concerns about the 3%. 1% would be more reasonable.

Senator Gage stated in the testimony he asked the difference between 3% and 5%. He recalls they stated there were additional costs of foreclosing. Under the 5% fee if it is not foreclosed they would get $10,000 with very little work it would be an additional $4,000 fee. He thinks 5% is too high as well.

Chairman Kolstad asked John Cadby for his comments. He deferred to the attorney Gene Phillips. He stated they do handle that type of foreclosure. They charge their actual time to the bank. If it exceeds 1% the bank is stuck with the difference. They have had as high as $75,000 to $100,000 but no more than that. He does not see an exhorbitant fee ever being extracted.

Senator Goodover stated he talked with one of the bankers this morning. He thought the 1% fee with the possibility of a lid was reasonable.

Senator Gage stated the information that we got from the one bank last time was it averaged out to just a little less than $600. Those were just the legal fees as he recalls.

Senator Lee amended his motion on line 15, page 3, to read fees to be charged shall not exceed the lesser of $1,000 or 1%. Senator Fuller seconded the motion.

Senator Goodover stated I am sure if there is a problem they will be back.

Senator Dover asked why are you raising it so much? Senator Gage stated they have been on the books so long. Senator Lee stated it would be the 1%, it would not automatically be $1,000. Senator Regan added whichever is the smaller.

The Committee voted 9-1 with Senator Boylan voting no, that the proposed amendment to HOUSE BILL 347 BE ADOPTED.

Senator Lee made the motion that House Bill 347 As Amended Be Concurred In. Senator Fuller seconded the motion.

The Committee voted 9-1 with Senator Boylan voting no that HOUSE BILL 347 AS AMENDED BE CONCURRED IN. Senator Lee will carry this bill on the floor.

ACTION ON SENATE BILL 84: Senator Lee made a motion to ask for a ruling from the chair that all new language in Senate Bill 84 that

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

48th LEGISLATIVE SESSION -- 1983 DATE 2-8-83

NAME	PRESENT	ABSENT	EXCUSED
PAUL F. BOYLAN	✓		
B. F. CHRIS CHRISTIAENS	✓		
HAROLD L. DOVER	✓		
DAVID FULLER	✓		
DELWYN GAGE	✓		
PAT M. GOODOVER	✓		
GARY P. LEE, VICE CHAIRMAN	✓		
PAT REGAN	✓		
PAT M. SEVERSON	✓		
ALLEN C. KOLSTAD, CHAIRMAN	✓		

STANDING COMMITTEE REPORT

February 8 19 83

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration House Bill No. 347

(DONALDSON) GOODOVER

Respectfully report as follows: That House Bill No. 347

as amended as follows:

1. Page 4, line 15.
Following: "~~$250~~"
Strike: "3%"
Insert: "the lesser of $1000 or 1%"

This amendment supercedes the previous amendment made to House Bill 347 on February 4, 1983.

~~DO PASS~~

AND AS AMENDED, BE CONCURRED IN

STATE PUB. CO.
Helena, Mont.

ALLEN C. KOLSTAD, Chairman.

HC 28

HOUSE BILL NO. 347

INTRODUCED BY DONALDSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SMALL TRACT FINANCING ACT OF MONTANA BY INCREASING THE LIMIT ON TRUSTEES' AND ATTORNEYS' FEES AND DELETING UNNECESSARY RECORDING LANGUAGE; AMENDING SECTIONS 71-1-315 AND 71-1-320, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-1-315, MCA, is amended to read:

"71-1-315. Notice -- sale -- payment. A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided:

(1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) the grantor, at the grantor's address as set forth in the trust indenture or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request;

(iv) any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold. Upon request of the trustee, the notice of sale shall be posted by a sheriff or constable of the county wherein the property to be sold is located.

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property or some part thereof is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least three public places in each county in which the property or some part thereof is situated. The

REFERENCE BILL

posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be ~~filed--for--record~~ recorded in the office of the clerk and recorder of each county where the property or some part thereof is situated, affidavits of mailing, posting, and publication showing compliance with the requirements of this section.

(3) On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels, and any person, including the beneficiary under the trust indenture but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(4) The purchaser at the sale shall pay the price bid in cash, and upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to resell the property at any time to the highest bidder. The

party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person."

Section 2. Section 71-1-320, MCA, is amended to read:

"71-1-320. Trustees' fees and attorneys' fees. Reasonable trustees' fees and attorneys' fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of 71-1-312, the reasonable trustees' fees and attorneys' fees to be charged to the grantor shall not exceed ~~$150 $250 2%~~ THE LESSER OF $1,000 OR 1% OF THE AMOUNT DUE ON THE OBLIGATION, BOTH PRINCIPAL AND INTEREST AT THE TIME OF DEFAULT. In no event shall trustees' fees and attorneys' fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure."

-End-